

**REMARKS**

In the Office Action mailed on January 6, 2004, claims 16-19, 21-32 and 34-44 were rejected. Claims 16-19, 21-32 and 34-44 remain pending in the present application. Reconsideration and allowance of all pending claims is requested.

**Rejections Under 35 U.S.C. § 103**

The Examiner rejected claims 16-19, 21-27 and 36-41 under 35 U.S.C. § 103(a) as being obvious over the reference of Frid et al. (U.S. 5,857,967) in view of the reference of Gat (U.S. 5,954,663) and the reference of Bates et al. (U.S. 5,907,681). In addition, the Examiner rejected claims 28-32, 34-35 and 42-44 under 35 U.S.C. § 103(a) as being obvious over the Frid et al. reference (alone or in view of the Gat reference) and the Bates et al. reference. The Applicants respectfully traverse these rejections.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the

obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

*Claims 16 and 28 and their dependent claims*

With regard to claim 16 and its dependents, a method of monitoring a fetal condition is recited. Similarly, claim 28 and its dependents recite a corresponding system for monitoring a fetal condition. The Applicants believe that one or more of the recitations of claims 16 and 28 are absent from the combination of references relied upon by the Examiner. For example, claim 16 recites the act of “transmitting the presentation to a general purpose display ..., wherein the presentation is transmitted in a real time mode or in a historical mode....” claim 28 recites a corresponding system limitation. The Examiner concedes that such a feature is not disclosed by the Frid et al. reference or the Gat reference. *See* Official Action mailed January 6, 2004 (the “Present Official Action” hereinafter), p. 2, section 2, and p. 4, section 3. Instead the Examiner relies upon the newly cited reference of Bates et al. to provide this recited feature. Present Official Action, p. 3, section 2, and p. 4, section 3.

While the Applicants agree that the recitation of transmission in a real time mode or in a historical mode is absent from the references of Frid et al. and Gat, the Applicants do not agree that the Bates et al. reference discloses such a feature. In particular, the Applicants refer the Examiner to page 14, line 27 to page 15, line 1 of the present application where data available for transmission in a historical mode is discussed. In particular, the referenced passage provides that:

[D]ata may be transmitted for a *predetermined historical time period*, such as the most recent four hours, *and updated continuously*. However, *any suitable time period may be employed*, with the desired time interval generally

being selected in accordance with the type of condition being monitored, the quantity of historical data available, and the importance of historical data in evaluating the patient's condition.

Application, p. 14, line 28 to p. 15, line 1. (Emphasis added). As evident from this passage, the historical time period for which data is provided is *independent* of the update frequency at which the transmitted data is refreshed. The desired time interval may be selected based on what data is available and would be useful, however these determinations are independent of the refresh rate of the general purpose network presentation. In other words, the historical mode provided by claims 16 and 28 provides for the transmission of data associated with *any suitable time period*, which once selected may be updated in accordance with the refresh rate of the browser, such as continuously for most medical applications.

The Examiner, however, characterizes the designation of a historical and a real time mode as simply reflecting the refresh rate associated with the browser. In particular, the Examiner states that:

Applicant differs in providing a means for choosing between realtime mode in which data is automatically updated or historical mode wherein the data is not updated. Such a feature is common on network browsers in the form of an auto refresh selector that can be selected to update available website data or turned off such that no such updating and therefore only historical data is transmitted. The examiner refers applicant to column 1 lines 20-30 of Bates et al USPN 5,907,681.

Present Official Action, p. 2-3, section 2. As evidenced in the quoted passage, the Examiner erroneously equates historical data with data that is not updated instead of with data associated with any arbitrary time period. However, as quoted above, the selection

of historical data in the context of the present application is independent of the rate of updates, continuous or otherwise.

Therefore, even if the Bates et al. reference were to disclose what the Examiner alleges, it does not disclose the transmission of a general purpose network presentation in a historical mode, as recited by claims 16 and 28. Indeed, a generous reading of the Bates et al. reference fails to disclose any mention of historical data and confirms that the Bates et al. reference simply addresses techniques for automatically selecting web browser refresh rates, not for the arbitrary selection and viewing of historical data. Therefore, in view of the Examiner's admission that the Frid et al. and Gat references do not disclose a historical mode of transmission and in view of the absence of such a mode in the Bates reference, the cited combination of references fails to support a *prima facie* case of obviousness. Therefore, claims 16 and 28, and those claims depending therefrom, are believed allowable over the cited combination of references.

Claim 23 and its dependent claims

With regard to claim 23 and its dependents, the Applicants respectfully note that the transmission of an updated interface page in a real time mode or in a historical mode is recited. For the reasons set forth above, the recitation of such a historical mode by which data may be alternatively transmitted is believed to be absent from the cited combination of references.

Furthermore, claim 23 recites the presence of user selectable command devices that are included on the interface page. Such user selectable command devices are discussed on page 11 of the application at lines 23-31 and at Fig. 4. Examples provided of such user selectable command devices include buttons for fast reverse to start, fast reverse, stop, forward, fast forward, fast forward to stop, zoom-in and zoom-out. Application, p. 11, lines 26-31. The Examiner has failed to indicate that such user selectable command devices are disclosed in the cited combination of references. The

Applicants believes this failure on the part of the Examiner is due to the absence of these command devices from the three cited references. Therefore, in order to maintain the present rejection, the Applicants respectfully request that the Examiner provide a specific citation to one of the cited references which discloses the recited command devices.

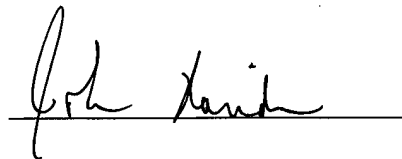
Absent such a citation by the Examiner, and in view of the deficiency of the cited references with regard to the historical mode, the cited combination of references fails to support a *prima facie* case of obviousness. Therefore, claim 23 and those claims depending from claim 23 are believed allowable over the cited combination of references.

### **Conclusion**

In view of the remarks set forth above, Applicants respectfully request reconsideration and allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Date: March 8, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Rariden", is written over a horizontal line.

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